THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.25227 OF 2005

Dated: 25-8-2006

Between:

Smt. Sumathi … Petitioner

And

1. Government of Andhra Pradesh,
   Home Department, Secretariat,
   Hyderabad, rep. by its Principal Secretary
   and 3 others. … Respondents

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WRIT PETITION NO.25227 OF 2005

ORDER :

The writ petitioner is the wife of one S.V.Satish Kumar Reddy, resident of Vempalli Village, Kadapa District which falls within Pulivendula Assembly Constituency. It is stated that her husband belongs to Telugu Desam Political Party and he is a strong opponent of the Congress-I party, particularly the present Chief Minster of the State and he even contested in the General Elections of 1999 and 2004 from Pulivendula Assembly Constituency against the present Chief Minister of the State.

The petitioner further alleged as under :

In connection with the elections held to the Managing Committees of the Primary Agricultural Co-operative Societies (hereinafter referred to as PACSs) held in the month of October, 2005, S.V. Satish Kumar Reddy, husband of the petitioner went to the office of the PACS, Velpula village on 18-10-2005 along with T.D.P. workers and contestants for filing nominations. While so, some of the persons belonging to Congress-I party who have strong affiliations to the present Chief Minister attacked S.V. Satish Kumar Reddy and other supporters of T.D.P. As the situation became alarming and sensitive, and the life of S.V. Satish Kumar Reddy was in danger, his gunman by name Mr. Venkateswarlu forced him to go into the cattle-shed adjacent to the office of the PACS, Velpula. However, the gathering outside the PACS started pelting stones on the cattle-shed. Some of the T.D.P. workers along with the gunman who was armed with Official Carbine Gun were protecting S.V. Satish Kumar Reddy.

When the mob started pelting stones resulting in injuries to two party workers of T.D.P. and when the gunman noticed that two persons armed with hunting sickles were running towards the cattle-shed, anticipating danger to the life of S.V.Satish Kumar Reddy, the gunman opened fire and two persons sustained injuries. In the meanwhile, on an information given by the Police Constables, who were posted for bundobust duty, the Deputy Superintendent of Police, Pulivendula entered the village and dispersed the crowd and rescued Sri S.V. Satish Kumar Reddy. In retaliation to the said incident, the strong supporters and followers of Congress-I party burnt and demolished the houses belonging to the followers of S.V.Satish Kumar Reddy. They also set fire to the furniture in his house and some gold ornaments as well as cash were stolen by the goonda elements. Though the above incident took place around 12.00 noon, the police did not take any immediate action and they registered the First Information Report (F.I.R.) only at 2.00 pm on 18-10-2005 purportedly on the basis of the dying declaration by one of the deceased, Gangi Reddy, who was a strong supporter of the Chief Minister. Surprisingly, the FIR contained an entirely different version stating that S.V. Satish Kumar Reddy had taken away the gun forcibly from the gunman at about 11.00 am and fired at the mob. On the basis of the same, Cr.No.26/2005 of Vemula P.S. was registered under Sections 147, 148, 324, 307 and 302 read with Section 149 of the Indian Penal Code and Section 27 of the Arms Act, 1959 against S.V. Satishkumar Reddy and others.

The petitioner alleged that the entire case was concocted and the actual fact that the gunman of S.V. Satish Kumar Reddy had fired at the mob was dramatically changed at the instance and instructions of the ruling party so as to appear as if S.V. Satishkumar Reddy himself fired at the mob with an unlawful object.

The petitioner states that as a matter of fact the entire media, which was aware of the shoot-out, telecast the news by about 1.00 pm

that two persons were shot and injured by the gunman of S.V. Satishkumar Reddy. The petitioner also states that in the said incident some of the T.D.P. leaders also sustained injuries and on a complaint made by T.Siddha Reddy, the Vemula Police registered Cr.No.27/2005 against the two deceased by name Gajjala Gangi Reddy and Chappidi Ramakrishna Reddy. The contents of FIR in Cr.No.27/2005 show that the situation on 18-10-2005 was tense and the two deceased were moving with hunting sickles to attack S.V. Satishkumar Reddy and other T.D.P. leaders.

The petitioner further apprehends that the Circle Inspector of Police, Pulivendula by name Rajeswar Reddy who has been appointed as the investigating officer may not conduct fair investigation. It is stated that against the said officer, S.V. Satish Kumar Reddy earlier made a complaint to the Election Commission during Municipal Elections alleging that he was favouring the Congress-I party. On the basis of the said complaint, the Election Commission, having made the necessary enquiry, directed the District Administration to keep the said C.I. of Police away from election duties. Hence, the said officer if continued as the investigating officer, may act as per the dictates of the leaders of Congress-I party to strengthen the case against S.V.SatishKumar Reddy.

It is also stated that when Sri Y.S. Raja Reddy, the father of the present Chief Minister, was killed on 23-5-1998 within the jurisdiction of Vemula Police Station, a case was registered as Cr.No.22 of 1998 by the then Station House Officer, Vemula P.S. in which S.V.Satishkumar Reddy was initially implicated as accused No.14. Ultimately, after due investigation by the C.I.D. Police, it was found that S.V. Satishkumar Reddy was falsely implicated and accordingly his name was deleted from the list of the accused. In the said background, the petitioner alleges that this is the second attempt to implicate her husband so as to eliminate him from the political field since he is a

strong opponent of the present Chief Minister in Pulivendula Assembly Constituency.

The petitioner pleaded that if the investigation was continued by the respondents herein, the enquiry would not be fair since the police were acting in a partisan manner at the dictates of the higher-ups. It is also alleged that the entire department being under the control of the State Government and since her husband happened to be a strong rival of the Chief Minister, the police would not act fairly and would try to please the Government. It is contended that the manner in which the police intentionally avoided to take into consideration the information available at the earliest point of time at 11.00 am, but registered the crime at 2.00 pm on the belated information shows that the police were not acting fairly resulting in grave miscarriage of justice.

Hence, this writ petition seeking a Writ of Mandamus directing the 1st respondent – Government of A.P. to entrust the investigation in Cr.No.26 of 2005 of Vemula P.S. to an independent agency like Central Bureau of Investigation (C.B.I.).

The Superintendent of Police, Kadapa – the 3rd respondent filed a counter-affidavit denying the allegations made by the petitioner. It is stated that the husband of the petitioner S.V.Satish Kumar Reddy was the main accused in Cr.No.26/2005 of Vemula P.S., registered on 18-10-2005 on a compliant lodged by one Gajjala Gangi Reddy alleging that S.V. Satish Kumar Reddy without any provocation snatched the weapon from his gunman and fired five rounds at the workers of the Congress-I party, which resulted in the death of Chappidi Ramakrishna Reddy and Gajjala Gangi Reddy. Though Chappidi Ramakrishna Reddy succumbed to injuries at 12.40 pm without giving any statement, the police recorded the statement of Gajjala Gangi Reddy from 12.30 pm to 1.30 pm. who stated that he

received bullet injuries when S.V.Satish kumar Reddy snatched the weapon from his gunman and fired at him. He reiterated the same in the dying declaration recorded by the Judicial First Class Magistrate at 2.00 pm and succumbed to injuries at 2.30 pm. Basing on the statement of Gajjala Gangi Reddy, Cr.No.26 of 2005 was registered at Vemula P.S. at 2.00 pm and investigation was taken up. The gunman who was looking after the security of the husband of the petitioner had also corroborated the contents of the F.I.R. The allegation that there was delay in registering the F.I.R. has been denied and it is explained that the incident took place at about 11.30 a.m. and both the deceased were shifted to the Government Area Hospital, Pulivendula by 12.10 pm. The statement of the complainant was recorded at 12.30 pm which went on till 1.30 pm. The Judicial First Class Magistrate, Pulivendula came to the hospital at about 2.00 pm and recorded the dying declaration of the complainant Gajjala Gangi Reddy. Immediately, thereafter the crime was registered at 2.00 pm and the complainant died at about 2.30 pm. The averment that the husband of the petitioner was arrested on 18-10-2005 was also denied and it was stated that he was actually arrested on 20-10-2005 and was produced before the Court on the same day and was remanded to judicial custody. The allegations made against the investigating officer have also been categorically denied and it was explained that on receipt of a complaint by the husband of the petitioner with similar allegations during the municipal elections against the Inspector of Police, Pulivendula stating that he was favouring the congress-I party, the said Inspector of Police was temporarily directed not to officiate as Inspector of Police, Pulivendula on the polling day in order to avoid any controversies in the matter. In fact, the said allegations were not true and were made only to gain political mileage. As a matter of fact, the Circle Inspector of Police, Pulivendula Mr. K.Rajeswar Reddy has been working since 17-1-2004 well before the General Elections, 2004. It is stated that the petitioner levelled all false allegations

against the police and the apprehension of the petitioner was without any basis. While assuring that the investigation in Cr.No.26 of 2005 of Vemula P.S. would be conducted impartially and in accordance with law, it was stated that there was no necessity for transferring the investigation to any independent agency such as C.B.I.

I have heard the learned Senior Counsel Sri D.Prakash Reddy, appearing for the petitioner and the learned Advocate General appearing for the respondents; and perused the material on record.

The learned Senior Counsel submitted that having regard to the admitted fact that the husband of the petitioner was a strong opponent of the present Chief Minister of the State and particularly keeping in view the past record of political rivalry, it would be appropriate to direct transfer of investigation by an independent agency.

On the other hand, the learned Advocate General raised a preliminary objection as to the very maintainability of the writ petition on the ground that the C.B.I. was not made a party to the writ petition. The learned Advocate General also contended that in the absence of any authentic evidence, the relief as prayed for cannot be granted merely on the basis of the news paper reports and the television news reports, relied upon by the petitioner in support of the alleged changed version in the F.I.R.

The learned Advocate General while referring to Section 6 of the Delhi Special Police Establishment Act further contended that without the consent of the State Government no investigating agency other than the State Police could investigate an offence committed in the State and therefore it is impermissible to entrust the investigation to C.B.I. In support of his contention, the learned Advocate General relied upon a decision of the Supreme Court in K.

CHANDRASEKHAR v. STATE OF KERALA[1].

At the outset, it is to be noted that the scope of the power under Article 226 of the Constitution of India to direct an investigation by the C.B.I. even in the absence of the consent of the State Government is the subject-matter of a reference made to a Constitution Bench of Five Judges of the Supreme Court.

However, there can be no dispute about the settled legal position that this Court if satisfied that the people's confidence would be best assured if the investigation is conducted by an independent agency, may entrust the investigation to an independent agency like C.B.I. while exercising its discretionary power under Article 226 of the Constitution of India.

In the case on hand, the fact that S.V. Satish Kumar Reddy is a strong opponent of the Congress-I political party which is in power in the State is not in dispute. The incident that took place on 18-10-2005 which resulted in the death of two persons assumed importance in view of the political rivalry between the two groups i.e., T.D.P. to which S.V. Satish Kumar Reddy belongs and the Congress-I which is the ruling party in the State. The incident was given wide publicity by the media and as could be seen from the material placed before this Court the news reports telecast in the electronic media at the earliest point of time after the incident, appear to be totally different from the version in the F.I.R. May be that, the version of the media as published in the news papers and telecast in the electronic media cannot be taken as credible information, however certainly the conflicting versions create a reasonable apprehension not only in the minds of all the persons involved in the offence and the members of their families but also the public that the real culprits are being shielded.

As noted above, whereas the specific case of the accused S.V.

Satish Kumar Reddy was that his gunman had fired at the mob resulting in death of two persons, the prosecution alleged that S.V. Satish Kumar Reddy himself fired at the mob having snatched the weapon from his gunman. The two versions being entirely different and particularly since the constituency is known to be a faction-ridden place, entrusting the investigation to an independent agency would ensure fair investigation. By adopting such procedure, no prejudice would be caused to the prosecution, but, on the other hand, it would not give scope for any avoidable controversies.

However, by way of an additional counter-affidavit filed by the investigating officer, it is brought to the notice of this Court that after the arguments were concluded in this writ petition, the investigating officer having completed the investigation filed the charge-sheet on 9-1-2006 in the Court of the Judicial First Class Magistrate, Pulivendula.

In the circumstances, the Mandamus as prayed for cannot be granted.

However, it is made clear that this shall not preclude the respondents to entrust the matter to an independent agency for reinvestigation in the light of the observations made above and to take appropriate steps in accordance with law.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 25–08-2006.
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[1] AIR 1998 Supreme Court 2001